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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,173	01/18/2002	Gai-Li Jiao	2577-107	9552

6449 7590 09/09/2005

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EXAMINER

HELMER, GEORGIA L

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/936,173	Applicant(s) JIAO ET AL.	
	Examiner Georgia L. Helmer	Art Unit 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-8,10,11,13-16,18,20-26 and 28-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-8,10,11,13-16,18,20-26 and 28-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

3-0-0

Request for Continued Examination

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 May 2005 has been entered.

Status of the Claims.

1. Claims 1-3, 9, 12, 27, 29, have been canceled; claims 4-8, 10, 11, 13-26, 28 and 30-36 are pending and are examined in the instant action.
2. All rejections not addressed below have been withdrawn.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112-2

4. The rejection of claims 4 and 31 and claims 5-8, 10-11, 13-26, 28, 30 and 32-36 dependent thereof, under 35 USC § 112-2, as being indefinite in the recitation of "multiple effect triazole" has been withdrawn in light of Applicant's § 1.132 Declaration of Jiao Giai Li signed 19 May 2005.

The § 1.132 Declaration of Jiao Giai states that it is well know to those of skill in the art of plant tissue culture that there term "multiple effect thiazole", abbreviated as

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MET, is a common name for a plant growth regulator having the common name of PACLOBUTRAZOL and the IUPAC name as given in the Declaration.

Although Applicant does not define "multiple effect triazole", abbreviated MET, in the specification, or give other clarification of this term, MET or "multiple effect triazole" is a term in the art as evidenced by Applicant's IDS of 4 March 2004, wherein 2 of the 6 cited non-patent literature articles, C2 and C4, use the term MET or multiple effect triazole in their titles. Also there is no evidence that the term MET is used for any other chemical of the art.

Accordingly, this rejection is withdrawn.

Claim Rejections - 35 USC § 112 Enablement

5. Claims 4-8, 10, 11, 13-26, 28 and 30-36 remain rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement, for reasons for record as set forth in the Office Action of 6 May 2004.

Applicant traverses, asking that the finality of the previous Office Action be withdrawn in view of the Examiner expanded arguments made therein, particularly in view of the new assertions regarding the transformation of cotton being highly dependent on particular varieties or strains of Agrobacterium and on the unsupported assertion that "the claims are broadly drawn to encompass all cotton plants, all culture media including any and all compositions, all Agrobacterium strains, all selectable agents and all selective markers (Response, p. 8). Applicant's argument is unpersuasive. The "new assertions" alluded to by Applicant are in fact in the body of

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the original Office Action of 6 May 2004, and are neither new nor expanded. Applicant further asserts that there is no evidence that transformation of cotton is highly dependent on a particular variety or strain of *Agrobacterium* (Response, p. 8).

Applicant's traversal is unpersuasive. The statement that "*Agrobacterium* mediated cotton transformation is considered in the art to be heavily variety dependent" is from Applicant's specification (p. 10 1st sentence) as cited in the Office Action 6 May 2004.

Remarks

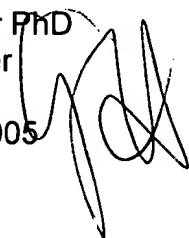
7. No claims are allowed.

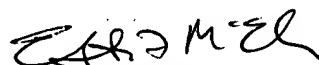
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Georgia L. Helmer whose telephone number is 571-272-0796. The examiner can normally be reached on M-Th, 10:30am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones can be reached on 571-272-0745. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Georgia Helmer PhD
Patent Examiner
Art Unit 1638
5 September 2005




ELIZABETH MCELWAIN
PRIMARY EXAMINER